

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 123 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RANA HAMIR AND COMPANY

Versus

STATE OF GUJARAT

Appearance:

MR HK PARMAR for Petitioner

MS SIDDHI TALATI for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 28/12/1999

ORAL JUDGEMENT

1. Heard the learned counsel for the parties and perused the order of the Public Works Contracts Disputes Arbitration Tribunal, Ahmedabad dated 19th October, 1995 made in Arbitration Reference case No. 47 of 1995. Under the impugned order, the Tribunal dismissed the

reference made by the petitioner under section 8 of the Gujarat Public Works Contracts Disputes Arbitration Act, 1992 as barred by limitation.

2. Relying on the decision of this court in the case of B. Patel & Co. vs. State of Gujarat reported in 1998 (3) GLR 1913 learned counsel for the petitioner submitted that the learned Tribunal has committed serious error of jurisdiction in rejecting the reference of the petitioner as barred by limitation. The judgment has also been read before this court.

3. I do not find any error much less an error apparent on the face of the order of the Tribunal which calls for the interference of this court under section 115, C.P.C., 1908. Learned Tribunal has not committed any material irregularity in exercise of its jurisdiction in passing of the impugned order. This case does not fall under any of the clauses (a), (b) and (c) of subsection (1) of section 115, C.P.C. It is not in dispute that the work order of contract in dispute was given to the petitioner by the respondent on 18th April, 1985. This work was to be completed within 731 days i.e. on or before 18th April, 1987. It is not in dispute that the work was completed on 31st January, 1988. The last bill no. 26 was prepared and paid to the petitioner on 15th December, 1988 by the respondents. At the time of payment of that or immediately thereafter no protest has been raised. First time the petitioner raised the dispute in the matter on 13th April, 1993. This fact is not disputed by the counsel for the petitioner. If we go by this date, then certainly this dispute was not raised within period of limitation permissible for arbitration and the Tribunal has not committed any error of jurisdiction in rejecting the reference as barred by limitation. In fact this matter is squarely covered by the decision of this court in the case of B. Patel & Co. vs. State of Gujarat (supra). This judgment in fact goes in favour of the respondents. By the time the dispute has been raised after payment of first bill, the period of more than five years had expired. Though it is a matter before the new Act came into force but old Limitation Act has to be applied and that dispute has not been raised within three years and as such, the Tribunal is correct in its approach to reject the reference as barred by limitation. This revision application is wholly misconceived. This claim made by the petitioner is totally barred by limitation. The Tribunal is correct in its approach to observe that this reference was nothing but only an attempt on the part of the petitioner to dig out a lifeless cause from the grave. The Tribunal

is also to certain extent correct in its approach that the petitioner has in fact abandoned its claim or it may be taken to be a case of deemed abandonment of its claim. The petitioner in fact acquiesced in the payment of bill dated 15th December, 1988.

4. Taking into consideration the totality of the facts of this case, it can not be said to be a case where the learned Tribunal has committed irregularity in exercise of its jurisdiction in passing of the impugned order. The claim of the petitioner made before the Tribunal was rightly held to be barred by limitation.

5. In the result, this revision application fails and the same is dismissed with costs. Rule discharged. Interim relief, if any, granted by this court stands vacated.

zgs/-